

This letter discusses the Interstate Commerce exemption. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

July 17, 2006

Dear Xxxxx:

This letter is in response to your letter received May 23, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The purpose of this letter is to determine whether sales or use tax was correctly paid to the state of Illinois or whether it is due to the State of Pennsylvania.

On March 29, 2004, ABC, a corporation located in Pennsylvania, purchased (3) pieces of heavy equipment at an auction in Illinois. ABC bid on these pieces of equipment via the internet. The purchase price for these pieces of equipment was \$ which included a 2% internet purchase fee. The auction company informed ABC that Illinois State sales tax must be collected. Illinois State sales tax of \$ was collected at the time of purchase (see invoice). ABC paid \$ to the auction company via wire transfer on DATE. ABC then hired COMPANY to pick up the pieces of heavy equipment and deliver them to Pennsylvania. The equipment remained at the auction site until it was picked up by COMPANY via three separate trucks. One truck picked one piece of equipment on DATE, 2004. Another truck picked up another piece of equipment on DATE, 2004 and the last piece was picked up by another truck on DATE, 2004 (see invoices). ABC paid COMPANY via check # in the amount of \$ on DATE. The state of Pennsylvania is requesting that use tax be paid to them because sales tax was not legally due in the State of Illinois. Was the sales tax paid in Illinois legally due or is ABC entitled to a refund from the State of Illinois?

DEPARTMENT'S RESPONSE:

For general information, please refer to 86 Ill. Adm. Code 130.605 regarding sales of property originating in Illinois. Subpart (c) of this regulation states that Retailers' Occupation Tax does not apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, *under the terms of his agreement with the purchaser*, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. Absent this or some other applicable exemption, a sale of property originating in Illinois is subject to Retailers' Occupation Tax.

The Department of Revenue's rule concerning Claims for Credit is found at 86 Ill. Adm. Code 130.1501. Claims for credit and refunds of Retailers' Occupation Tax are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation.

Please note that the Department has no authority to compel the seller to file a claim for credit. Whether or not the seller files a claim for credit with the Department is a private business matter.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk